IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9-1-2007

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THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Habeas Corpus Petition No.1046 of 2006

Tmt.Harifa Banu .. Petitioner

..vs..

1.The Commissioner of Police
Salem City, Salem

2.Government of Tamil Nadu
rep. by its Secretary
Prohibition and Excise Department
Fort St. George
Chennai 9

3.The Superintendent
Central Prison, Salem
Salem .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus calling for the records relating to the proceedings of the first respondent in C.M.P.No.10/GOONDA/Salem City/2006 dated 11.07.2006 against her husband, Sheikalavudeen alias Sheik, s/o Mohamadu Aneeba, aged about 38 years, and quash the same and consequently direct the respondents herein to produce the detenu who has been now detained under Act 14/82 in Central Prison, Salem before this Hon'ble Court and set him at liberty.

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For petitioner : Mr.R.Rajan

For respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor

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ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard the learned counsel appearing for the parties.

2. The order of preventive detention under Act 14/82 is in question in the present Habeas Corpus Petition.

3. The order of detention was passed on the ground that the detenu is a Goonda. In the grounds of detention, a reference has been made to Salem Town Police Station Crime No.1049 of 2006, which has been registered on the allegation that the detenu has committed an offfence under Sections 364(A), 386, 307 and 120(B) I.P.C. In the grounds of detention a reference has also been made to the ground case, dated 22.6.2006, wherein it is alleged that the detenu had committed an offence under Section 307 I.P.C., which has been registered by Annadanapatty P.S. in Crime No.1263 of 2006. In paragraph 5 of the grounds of detention, the detaining authority has made a reference to the fact that the detenu has been remanded to judicial custody in connection with the ground case, namely Crime No.1263/2006. However, it is not in dispute that the detenu was also in custody in connection with the earlier case, namely Crime No.1049 of 2006, where-under the case has been registered under Section 364 (A) IPC, which is punishable with life imprisonment, section 386 IPC, where the punishment can extend upto 10 years and Section 307 IPC, which is punishable with 10 years imprisonment. Thus, it is apparent that the allegation in adverse case is serious or more serious when compared to the ground case.

4. In the above background, the learned counsel for the petitioner has contended that the detaining authority has not applied his mind to the relevant facts and circumstances before coming to a conclusion that there was imminent possibility of the detenu being released on bail. It has been submitted by the counsel for the petitioner as a matter of fact the very same question was raised by the co-accused who had been similarly detained in H.C.P.No.841/2006 wherein the order of detention was quashed by judgment dated 21.11.2006. In the said order it was observed as follows:

> "4.The learned counsel appearing for the State also placed reliance on the decision reported in 2006 (2) MLJ (CRL) 592 (SIVAKUMAR VS. STATE OF TAMIL NADU REP. BY ITS SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT AND ANOTHER). In the said judgment, the decision reported in 2006 (3) CTC 650 (REVATHY VS. STATE OF TAMILNADU) has been referred to, wherein it is observed that if the

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Detaining Authority is aware of the fact that the person is in remand in both the cases, where the alleged offence in the adverse case is less serious than the offence in the ground case, it cannot be said that there is any non application of mind. We do not think that there is really a conflict between two decisions, inasmuch as in the latter case, the alleged offence in the adverse case is less serious and therefore, there was no question of non application of mind, as observed by the Division Bench. On the other hand, it is very much evident from the discussion that where the offence alleged in the adverse case is equally serious or more serious, the fact that the person is in remand in connection with equally or more grave offence is not brought to the notice of the Detaining Authority, is a factor, which vitiates the subjective satisfaction."

5. In the present case, as we have already referred to all the offences allegedly committed in the adverse case are equally serious or more serious in nature and yet, there is no reference made to the fact that the detenu has been in remand in those cases. In such view of the matter, the subjective satisfaction of the detaining authority is vitiated. Accordingly, the order of detention is quashed. The detenu shall be released forthwith, unless he is required in connection with any other case. The Habeas Corpus Petition is allowed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commissioner of Police
Salem City, Salem

2.The Secretary to the Government of Tamil Nadu,
Prohibition and Excise Department
Fort St. George
Chennai 9

3.The Superintendent
Central Prison, Salem
Salem

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4.The Joint Secretary
to the Government,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. R. Rajan, Advocate SR No. 1843

H.C.P.No.1046/2006

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